



STATE OF NEW JERSEY

Board of Public Utilities

*Two Gateway Center
Newark, NJ 07102*

IN THE MATTER OF THE APPLICATION)
OF ATX TELECOMMUNICATIONS)
SERVICES LTD. FOR AUTHORITY TO)
PROVIDE LOCAL EXCHANGE AND)
INTEREXCHANGE SERVICES IN NEW)
JERSEY)

TELECOMMUNICATIONS

ORDER OF APPROVAL

DOCKET NO. TE99070467

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated July 9, 1999, ATX Telecommunications Services, Ltd. (ATX or Petitioner) filed a petition with the Board of Public Utilities (Board) requesting authority to provide all forms of competitive local exchange telecommunications services, including intraexchange and interexchange services, facilities-based and resold, in the State of New Jersey. ATX submitted responses to Staff interrogatories by letters dated October 7 and December 3, 1999 and a response to a Staff questionnaire on October 4, 1999.

According to the petition, ATX is a limited partnership organized under the laws of the Commonwealth of Pennsylvania and its principal offices are located at 50 Monument Road, Bala Cynwyd, Pennsylvania 19004. Petition at 2-3. Petitioner submitted copies of its New Jersey Certificate of Foreign Limited Partnership and its Pennsylvania Certificate of Good Standing. Id. at 3, Exhibit 1 and Letter dated October 7, 1999, attachment A. According to the Petition, ATX is currently providing local exchange telecommunications services in the State of Pennsylvania, with over two thousand residential and business customers. Petition at 5. ATX also stated that it has been providing resold long distance services to over 1000 accounts within the State of New Jersey. Id. at 3-4. In addition, ATX advised that it is currently providing local exchange services in Maryland, Delaware, Virginia and the District of Columbia. Id. at 6. By letter dated December 3, 1999, ATX advised that it has received authority to provide intrastate and interexchange telecommunications services in Pennsylvania, New York, Texas, Alaska, West Virginia, New Hampshire, Massachusetts, Virginia, Montana, Kansas, Maryland, Colorado, Washington D.C., Utah, Delaware, Florida, North Dakota, Michigan and California. Letter at Attachment B. In addition, ATX also stated that it has approximately 75,552 lines in service and 7,141 customers for the year ending December 31, 1998 and had 450 employees.

Letter dated October 7, 1999 Attachment B. By letter dated October 4, 1999, ATX advised that a petition for approval of an interconnection agreement with Bell Atlantic-New Jersey, Inc. (BA-NJ) is pending at the Board (Docket No. TO99080624. ATX also advised that the Board has approved a resale agreement with BA-NJ on March 18, 1998. (Docket No. TM97110849). Response to Staff questionnaire dated October 4, 1999.

ATX stated that it intends to provide local exchange services in the territory currently served by BA-NJ. ATX also advised that it does not intend to provide local exchange telecommunications service in the service areas of small or rural LECs in New Jersey. Petition at 1. ATX advised that it intends to provide all forms of intrastate telecommunications usage services including, but not limited to: (1) basic residential exchange services (local exchange flat rate, measured rate service, operator access, etc.); (2) residential custom and class features (call waiting, caller ID, call forwarding, etc.); (3) basic business exchange services; (4) business custom calling and class features; (5) adjunct provided features (voice messaging, etc.); and (6) business and residential ancillary services (911, directory assistance, etc.) Id. at 3-4. ATX also stated that if the market conditions warrant, it will also offer the following categories of intrastate telecommunications exchange access services, including but not limited to: (1) basic business lines; (2) key system lines; (3) analog private branch exchange (PBX) trunks; (4) analog direct inward dial (DID) trunks; (5) digital PBX and DID trunks; and (6) Centrex-type system lines. Id. at 4. ATX also advised that each of these services will provide dial tone access to the public switched telecommunications network and may be equipped with various features and functions. Ibid. By letter dated October 4, 1999, ATX advised that it plans to offer its service to residential and small to medium size business customers.

Attached as Exhibit 5 to the petition, ATX filed a petition requesting that the Board grant a waiver to maintain its books and records outside the State of New Jersey pursuant to N.J.A.C. 14:1-5.15 and a waiver to utilize Generally Accepted Accounting Principles (GAAP) in place of the Uniform System of Accounts (USOA) pursuant to N.J.A.C. 14:1-1.2. Petition at 6, Exhibit 5. Specifically, ATX requests a waiver of N.J.S.A. 48:3-7.8, which requires that its books and records be kept within New Jersey. Petitioner stated that by keeping its books and records at its headquarters in Bala Cynwyd, Pennsylvania, it would be cost effective and more efficient for its staff. Petitioner also stated that it will produce its books and records at such time and place within New Jersey as the Board may designate, and will pay any reasonable expenses for examination of the records. Petition Exhibit 5 at 1-2. In addition, Petitioner seeks a waiver of N.J.S.A. 14:10-1.16, which requires that its accounts be maintained utilizing the USOA. ATX stated that due to the fact that it is not subject to jurisdictional separations and other accounting methods applicable to an incumbent local exchange company, Petitioner requests a waiver of Board rules in order to utilize GAAP. ATX advised that it currently maintains its books and records in accordance with GAAP, and that no other jurisdiction requires ATX to keep its books and records in accordance with the USOA. Id. at 3. ATX stated that maintaining two set of books would be an extremely onerous requirement, especially since GAAP will accurately reflect ATX's operations. Ibid.

ATX asserted that approval of its petition will further the public interest bringing significant benefits to telecommunications users in the State of New Jersey. Petition at 7. In addition, Petitioner also stated that approval of its petition will provide customers with a better combination of price, quality and customer service than other carriers. Ibid.

With regard to its managerial qualifications, ATX submitted the professional biographies of its key personnel, which, according to ATX, demonstrate extensive telecommunications experience and expertise of its management team. Id. at 5-6, Exhibit 3. ATX also asserted that it has the technical qualifications to provide its proposed telecommunications services in the State of New Jersey. Id. at 5. According to the petition, ATX is an experienced provider of local exchange and long distance services, as noted above, ATX is already a certificated telecommunications provider in several jurisdictions. Ibid. ATX also advised that it will provide customers with Internet, cellular, international long distance and LAN/WAN services. Ibid.

With regard to its financial qualifications, ATX stated that it is financially qualified to provide local exchange telecommunications services in New Jersey. Petitioner stated that with over 10 years of telecommunications experience and an annual gross revenue of approximately of \$100,000,000, ATX has the financing and capital necessary to conduct its telecommunications operations as specified in this petition. In support of its financial qualifications ATX submitted under seal its statements of earnings and balance sheets for the year ended December 31, 1998. Petition at 4, Exhibit 2. Petitioner has requested that the Board grant protective treatment of Exhibit 2 because according to the Petitioner, Exhibit 2 contains proprietary commercial and financial information regarding ATX's operations in New Jersey. Petitioner asserted disclosure of this information may provide competitors a significant competitive advantage. Ibid. ATX submitted its pro forma income statement for the first two years of operations in New Jersey. Letter dated December 3, 1999, Attachment A. ATX respectfully requests that Attachment A receive confidential treatment and that disclosure be limited to the Board only. Id. at 2. ATX stated that it is a privately held limited partnership that does not publicly disclose information, and therefore, disclosure may result in substantial harm to its competitive position in New Jersey. Id. at 1.

By letter dated September 15, 1999, the Division of the Ratepayer Advocate (Advocate) stated that it supports the customer's benefits that will be realized through the introduction and expansion of competition in New Jersey's local exchange market and increased competition in the interexchange market. The Advocate also advised that the petition is consistent with the public interest, convenience, and necessity and therefore recommends that the Board approve the petition and find that the grant of the requested waivers are in the public interest.

DISCUSSION

On February 8, 1996 the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of ATX's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to a demonstration of financial, technical and managerial integrity.

In considering this application, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed ATX's petition and the information supplied in support thereof, the Board FINDS that ATX has demonstrated that it possesses the requisite financial, technical and managerial resources which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES ATX to provide local exchange and interexchange telecommunications service in New Jersey subject to approval of its tariff. The Board notes that ATX will not be able to provide telecommunications services until its tariff (Docket No. TT99080526) is approved by the Board. With regard to ATX's financial information, the Board FINDS that the Petitioner has shown good cause, pursuant to N.J.A.C. 14:1-14.1, that the financial information contained in Exhibit 2 to the petition and in the December 3, 1999, Attachment A response to Staff interrogatory No. 3 is sensitive information which merits protection from disclosure in order to prevent competitive harm to the Petitioner. Therefore, the Board DIRECTS that the financial information contained in Exhibit 2 and the December 3, 1999, Attachment A response to Staff interrogatory No. 3 be kept under seal. The Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief, pursuant to N.J.A.C. 14:1-1.2(b) and N.J.A.C. 14:1-5.15(a), from its requirements to

maintain its books and records under the USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide its books and records to the Board upon 48 hours notice, and in the manner requested, and to pay the Board any reasonable expense or charge incurred by the Board for any investigation of these books and records, the Board APPROVES Petitioner's request for the exemptions from maintaining its books and records in New Jersey and under the USOA.

DATED: 3/29/00

BOARD OF PUBLIC UTILITIES
BY:

(signed)
HERBERT H. TATE
PRESIDENT

ATTEST:

(signed)
EDWARD D. BESLOW
ACTING BOARD SECRETARY

(signed)
CARMEN J. ARMENTI
COMMISSIONER

(signed)
FREDERICK F. BUTLER
COMMISSIONER